REPORT

ON THE

ADMINISTRATION OF JUSTICE,

IN THE PROVINCE

OF

OUDE,

FOR

1859

AND THE BEGINNING OF

1860

LUCKNOW:

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JUDICIAL REPORT FOR 1859.

THE year 1859 has seen the complete restoration of peace, and a return to the ordinary course of justice throughout the province. The judicial statistics for the year are still somewhat abnormal, and not quite complete from the beginning, but the last of the actual storm of the war impinged but very slightly upon the period, and the returns rather exhibit the lull after the storm which has so generally followed Indian conquests. I trust that much use has been made of the time to repair the ravages of the past, and to get into complete working order our new machinery and system, so that it may be said that at the close of 1859, and commencement of 1860, we have absolutly and completely returned to a normal state, in which peace is maintained and justice administered as in the quietest times. In the Districts, with but rare exceptions, a regular Civil Administration had been established by the 1st January 1859, and in the one or two frontier districts, which had not been the scene of the war, there was a delay of but three or four weeks, so that the returns for the year are in fact, very nearly complete There was only for some time longer a want of regular and trustworthy returns of offences ascertained to have been committed, in consequence of the separation of the police from the Judicial Administration, and the necessary delay in adjusting the relative functions of the two departments

2.—Owing to the vigilance of the Military and Police employed on the frontier, from the time when the enemy were expelled the peace was but very rarely and partially broken in the Northern part of the frontier districts by incursions of armed rebels, and of that all apprehension has now ceased. I have lately signed the warrant for the execution of the last of the Sepoys taken in the last action of the war, in which a party of the Military Police very gallantly fought and conquered two mutineers, killing one and capturing the other. And I have passed sentence upon the Ex-Minister Mummoo Khan, whose case may be said to be the last of the series of political trials resulting from the suppression of the rebellion and the surrender of the rebel leaders Thus, then, almost by the end of the year, and altogether by this present time of writing, we have fulfilled most of the abnormal duties in the Judicial Department resulting from the rebellion. No important case is now pending, and if there should be any others hereafter, they will be but isolated cases.

3.—Throughout the province ordinary crime and litigation have certainly been less than in ordinary times. My hope is that, we have not unsuccesfully taken advantage of the lull and of the *tabulá rasa* caused by the mutiny, to institute and carefully and attentively set in operation a Judicial system, which is at least not without its peculiarities and originalities, and is at any rate an interesting experiment. The orders of the Government passed in 1858, or since received in reply to our suggestions, in extending the power of District Officers, altering the mode of punishment, and sanctioning new arrangements in regard to the mode of taking and recording evidence, the Civil Procedure, the substitution for the ancient irresponsible Omlah of a Clerk of each Court responsible for defined duties, the altered rules greatly abbreviating the periods of limitation for civil suits, and the institution of a system of registration on a basis infinitely broader than any thing before attempted, all these and other reforms have rendered our Judicial system essentially different from anything which has preceded it, and have opened a wide field of experiment and enquiry The great means of advance must always be, to make what has been once gained the *locus standi* from which tentatives towards fresh advance may be made. As in our Anglo Indian Administration commencing with the experience gained in Bengal, we achieved an improved Administration in the North Western Provinces, and again taking the North Western system as a basis, we advanced much further in the Punjab, so our object now is to take advantage of all that has been learned by experience in the Punjab, and from that basis to seek to advance still farther

4.—Among Judicial matters, I have long in particular much felt that while in Civil Procedure and other important subjects the progress made in the Non-Regulation Courts had been immense, there was always in practice a certain looseness in the proceedings of those Courts. This was to a certain extent a natural consequence of the system which devolved on the same Officers all duties of every kind, executive and judicial, and aimed at the entire avoidance of harsh results arising from fixed rules. But my object has now been, as far as possible to obtain the advantages of an improved procedure and a certain regularity and exactness, (which is I think, indispensible to proper Judicial proceedings,) and to teach the subordinate Officers a Judicial bearing and habit of mind and certain easy rules and principles, by which they may, in simple form, sift real issues from irrelevant matter, and eventually acquire a practice and aptitude, a knack I may call it, which will render their Courts infinitely more efficacious and capable ofdisposing of a far larger amount of business than under a too untrained system relying too much on an unskilled and unguided common sense. I have thought that a good deal in this way might appropriately be attempted at a time when the District Officers were relieved of a great portion of their most emergent executive duties by the organization of a separate police, and when the moderate number of suits before them gave them ample time to learn at leisure the practice which would afterwards enable them much more quickly and easily to deal with the increasing litigation resulting from peace and civilization.

5.—I have also taken advantage of the increased powers conferred on Deputy Commissioners, as well as of the time gained by the separation of police duties, and the general freedom from too overwhelming work to get rid altogether of the system hitherto too much prevailing, (especially in Criminal Cases under the Punjab system) and which I consider fatal to proper judicial habits and practice, viz. what is called trying on the record *i. e.* one Officer hearing the witnesses and making record of the case, and another deciding upon the perusal of the papers. Both Deputy Commissioners used too often to employ Assistants to prepare cases which they should have tried themselves, and it was under the former system almost necessary to authorize Commissioners to pass sentence in a large proportion of cases on the record of the District Court. Now that the Deputy Commissioners have so large powers nearly equal to those of a Sessions Judge, I have insisted on each Officer himself trying the cases of which it is his duty to dispose, and I trust that this practice will be strictly enforced.

6.—Throughout the year the working of the new police system has necessarily been brought under the constant observation of the Officers employed in dealing with criminal cases, and has been a great subject of interest and comment to which I shall afterwards more particularly allude. I will only here say that, well as the Military Police have in many respects deserved of the state, it cannot be said that on the whole they have yet been successful in purely civil duties, and even after making the great allowances which are due to them. I feel that it is my duty to state that I think there is still deficiency which shews something to be wanting in the system followed during the past year. That deficiency I attribute in great part, to the want of accord and mutual co-operation between the Magisterial and Police Departments, and I think that this want af accord has been greatly due to the separation and estrangement caused by the too independent position, and too Military and powerful character originally given to the police. In all human affairs thorough co-operation of two powers or persons is only secured by the subordination of one to the other. Jealousy and rivalry result from independence. I am aware that in theory the independence of the Police has been gradually reduced, but in practice during the past year the police Superintendents, have not been really subordinate to the magistracy, the Magistrates have not attempted to instruct and guide them, and injury to the public service has resulted. So much is felt on all hands, and still at this moment I think that the position of the police is not sufficienntly defined; they are neither independent, nor sufficiently subordinate, and a more exact definition is required to give the system fair play. For in justice I must say that the system which I now believe to be intended by the Administration viz: a distinct and organised police, independent in its internal economy and discipline, but wholly subordinate to the Civil Magistrate in its action (his right arm and not his rival,) has not yet been in any degree tried, and that nothing has occurred to detract from the hope of that experiment, which, I now trust to see fairly tried in this province, and which may yet prove so successful as to justify the greatly increased expense.

7.—I will only further say generally, in regard to our judicial system, that if the ravages of the mutiny, and the want of regular Civil practice in the mutiny years, had necessarily caused that the personel of this commission was to begin with in great part somewhat new and unskilled, we have at least had this advantage that the officers have been teachable and ready to learn, and I think I may state it as a satisfactory result of, in fact, the first year of regular and peaceful Administration that they have already become

at its close, an efficient body of officers, performing their duties in a manner which deserves all praise, and of whom the administration has reason to be satisfied and proud. The reports, now submitted by the local officers, evince an interest in, and knowledge of their duties, which quite bear out the favorable opinions I had formed in practice. They are lucid, sensible and honest.

8.—I proceed to remark on particular subjects, and on the figured returns enclosed in this report. I have already, in June last, made and submitted a note on the Judicial Administration of the first few months of the year, and a copy is appended for reference. The figured returns, then furnished, were scanty, and those now submitted are for the whole year. But seeing that so many abnormal circumstances affect the figures, and that we have no other annual statements with which to compare, I have thought that a figured comparative synoptical analysis of per centages &c. for different districts and officers would only shew compendiously results which would be in no way trustworthy indices, and would only tend to mislead. I have, therefore, abstained from such minute analytical comparison and confine myself to broad facts and figures.

9.—*Political Trials.*—I mentioned in my former note that from the begining of 1859, all special tribunals for the trial of political offences, (which, indeed, had very little practical existence in 1858,) were abolished, and that with the exception of one man, sentenced in the first days of the year, all offenders of every kind have been tried in the ordinary course by the ordinary tribunals only. The special acts have only been used to enable us to transport offenders convicted of heinous offences, instead of retaining them in this country. It may be thought not otherwise than creditable that in this province, the latest and most contested scene of the war, we have been able to dispense with any thing like a summary or arbitrary Administration of Criminal Justice. And if we may fairly hope that in following a regular course, a more patient hearing and careful consideration of all cases has been secured, I do not think that it can, on the other hand be said that in consequence, justice and fair retribution have in any way failed. On the contrary, justice has, I believe, overtaken those local political offenders whose crimes were beyond forgiveness to a remarkable and satisfactory extent.

10.—We have throughout, notwithstanding the protraction of resistence, maintained the principle, that the former subjects of the Oudh State may, to a certain extent, be treated as enemies rather than rebels, and no man has been punished for rebellion, however aggravated or obstinate, which was not stained by the guilt of European blood, or attended by peculiar atrocities and crimes. But for almost all the massacres which can fairly be attributed to the people of Oudh, or towards which they contributed, such punishment has been awarded as must prove a wholesome example and warning for the future

11.—In my own Court 37 persons were sentenced to severe punishment, for leading or abetting murderous attacks on the unfortunate European Subjects of Her Majesty. In two cases eleven persons, residents of villages near the Ganges, have been convicted of taking part in attacks on the boats of the fugitives from Futtehgurh, by which some were killed, and the remainder driven into the hands of the Nana, soon to meet a horrible death Rambuksh, the Talooqdar of Doondea Khera, where the few who escaped from Cawnpore were so brutally attacked, has been convicted of personally superintending the attack and deservedly executed. Seven persons, concerned in the murders of the late Major Gall at Roy Bareilly, and Messrs Block and Stroyan at Sultanpore, have been convicted, as have been the criminals in two cases of the murders of Christians during the confusion of the out-break in the city of Lucknow And Rajah Jye Loll Singh, a large Talooqdar and very influential person, who made himself the connecting link between the Sepoy Army and the Lucknow Court, having been convicted on the clearest evidence of openly abetting and taking part with the Sepoys in the massacre of the European and Christian captives who had been detained as prisoners in the Kaiser Bagh, has most worthily suffered the last penalty. Second in criminality to the above are those who, though not guilty, as principals, of taking immediate part at the actual time of murder, have basely surrendered the European fugitives who had put themselves into their hands, and so contributed to their eventual murder In two notable cases, two of the principal Talooqdars, heads of families among the most important in Oudh, have been convicted of this offence, and have suffered both severe penalties in their persons and the confiscation of the whole of their estates and property. Rajah Lonee Singh, convicted of being a leader of Rebellion, aggravated by the voluntary surrender to destruction of a large party of Europeans, was transported for life, and has

since died in the Andaman Islands. The Rajah of Dhowrerah and his followers, though in many respects less guilty, as placed in a situation of some difficulty, were proved to have at last surrendered those whom, up to a certain point, they had preserved, and the necessity of deterrent example made it incumbent on me to sentence them to terms of imprisonment and confiscation of property. A minor Tallooqdar and his headman have been convicted of surrendering a Christian fugitive to the Nana. One Mahomedan Moulvee of talent and education, formerly a servant of the British Government, has been convicted of preaching murder as sanctioned by religion. And another Talooqdar was found guilty of plundering and maltreating the fugitives from Fyzabad, although he did not actually murder them. In one or two more such cases, convictions have been had since the commencement of 1860, and last Mummoo Khan, the rebel first lord of the Treasury, and confidant of the Queen Mother, has been convicted of surrendering, on the demand of the Mutineer Army, the prisoners entrusted to his care, and so becoming accessory to their massacre, and has been sentenced to imprisonment beyond seas for life. A few minor offenders have been convicted of similar crimes in the Commissioner's and District Courts, and a few persons, who have for the present escaped, have been outlawed under Act XXV of 1857. Most of the small number of persons entered as convicted of political offences in the District Statements, have merely been those outlawed in their absence, or were subjected to petty fines, &c., for rendering assistance to rebels or such small offences

12.—It must not, however, be supposed, from the list above given, that the people of Oude generally were very largely concerned in the murder and massacre of Europeans. On the contrary, I only make the statement to shew that almost all those, who were in any degree so guilty, have been brought to justice. As a rule, I do not think that either the Chiefs or the people have shewn a disposition to murder for murder's sake. If some have been punished for bloody crime, many others have been rewarded for protecting Europeans and aiding their escape. Many of the Talooqdars shewed a respect for life; and even among the ordinary population of Lucknow as many were found to aid as to murder. If one Moulvee and his party preached massacre, many others refrained from doing so, and the conduct of the Mahomedan Chief Priest of Lucknow has been handsomely acknowledged by the Governor General.

13.—*Trial of Sepoy Murderers.*—It will be observed that in the above list I have made no mention of Sepoys, and it is a singular fact that in this great Province of Oude, during the year 1859, not one man of that class was prosecuted to conviction. Soldiers of the British Government I have, of course, in no way held entitled to the favorable construction put on the conduct of ordinary Oude Subjects, and when I said that our abnormal duties, in the trial of political offenders, had nearly come to an end, I rather recorded a fact than mentioned it as matter of congratulation so far as the Sepoys are concerned. For every trial and investigation more and more proves that to them massacre and murder were chiefly due; and while we convict and punish the minor offenders who weakly surrendered captives to Sepoy massacre, it must be matter of regret that justice has not reached the Mutineer Officers and leaders, who were the major actors inthose crimes. Her Majesty's Most Gracious Amnesty, very liberally construed, covered the offences of the mass of those men whose mutiny was not crowned by murder. But there remains a vast mass of bloody crime which no Judicial retribution has reached. The fact is that local criminals are known and recognised on the spot, and patient local investigation has almost invariably brought out the facts against them. But the Sepoys, acting in bodies, have no local place, and have left few individual traces. The scenes of most of the crimes committed by the Sepoys were not in Oudh, and even in the notable instances which occurred in this Province, especially the two great massacres at Lucknow, the spectators can but speak of the acts as those of 'the Army,' 'the Officers of the Army,' 'the Officers and Sepoys' and so on. As a body there is no doubt of their guilt, but individually they are rarely named by local witnesses, and when named are rarely traced. The notorious Mukdoom Buksh seems to be almost the only man whose name is well known.

14.—I have before reported that so long as a rebel force kept the field, but few Sepoys came into our hands against whom any proof of individual atrocity was forthcoming. But I had, with the concurrence of the Chief Commissioner, caused to be detained the men belonging to the very worst Regiments which had committed general massacre, as distinguished from isolated murders, the possible work of individuals. And when the last desperate remnant of the Mutineer Army was captured and surrendered by the Nepalese at the end of 1859, the men known to belong to massacre

Regiments were sent in, and it was hoped that some light might have been thrown on those great crimes The men who were known to have been the leaders of the mutineers, especially the two Sepoy Generals of the notorious Nusserabad Brigade, were, in the first instance, put on their defence. But under subsequent orders of Government, desiring that the prisoners given up by the Nepalese should be prosecuted only for murder, that prosecution was withdrawn. And in the absence of independent testimony, no evidence of individual murder being forthcoming, it has singularly enough so happened that not one of the surrendered Sepoys has been brought to punishment. The detention of any large number being judged inconvenient they have now generally returned to their homes. I may, however, mention, with satisfaction, that by the exertions of the Local Officers and of Captain Chamberlain (to whom the special investigations are entrusted,) since the close of 859, six Sepoys have been apprehended in the Districts, and prosecuted to conviction The Sepoy of the 41st N I who shot Colonel Birch at Seetapore has, with a quiet fatalism, confessed and expiated his crime. Three Sepoys of the 28th Native Infantry have been clearly proved guilty of taking an active part in the massacre at Shahjehanpore, and have been executed. A Trooper, accidentally recognized by a Christian Drummer, has also been condemned for his part in murder at Mhow And the man taken in fight, when attempting to levy black mail from a frontier village, and already alluded to as the last of the sepoys, makes the sixth execution Some few sepoys still remain with Captain Chamberlain, but the number is few, and the chance of bringing them to justice doubtful. In one or two isolated instances convictions may possibly yet be had, but in the gross I apprehend, that as matters now stand, it must be considered that the great mutiny has come to an end in the Courts as well as in the field, and that the surviving sepoys being settled in their homes, will not again be disturbed.

15.—The fact is that anything like a general discovery of the individuals, who with their own hands committed the massacres, could only be obtained by a *very* strong and active machinery not local to any Province or place, but of general grasp aided by the whole power of the Government (exerted to ensure the energetic co-operation of every Officer connected with the murderous Regiments,) and working by the pressure of prolonged detention and separate confinement among the Sepoys themselves, on something of the Thuggee approver system. When a special machinery was first contemplated,

all the most guilty sepoys were still in the field, and the Officers ; cognizant of the circumstances, were variously engaged, and by the time that the sepoys surrendered, the special machinery had, for the most part, been dissolved. The time for anything of this kind is, I fear, now gone, the mutiny of 1859 has passed into history.

16 —*Ordinary Criminal Trials.*—I proceed to the statistics of ordinary criminal justice.

Before the system was quite settled, Officers sometimes disposed of cases beyond their powers, or inflicted unlawful punishments which cause the statements to exhibit some irregularities , but I trust that there is now an end of that.

17.—Statements Nos. I. and II. shew the number of serious crimes reported, the number of offences or accusations of different kinds brought to trial, and the result of those trials in the District Courts. The Returns of crimes, reported by the new Police, were not correctly or regularly furnished in the early months of the year, and are still not in all Districts correct and regular For instance, in the District of Lukheempore, only 2 burglaries are reported in the course of the year which shows manifest and extreme misapprehension or failure to report. Hence this column of the statement cannot be considered correct, and it will be necessary in future to compare and check the Returns. Happily the amount of crime is not so large as to render it necessary to go much into this Return in the present year. The crime of murder is, I think, more prevalent in Oude than in most of the Provinces with which I have had to do, and the cases are, generally, not those resulting from the recent anarchy, or even from habits of rapine and violence, but more frequently senseless domestic murders, and such like, often perpetrated in a foolish way without arrangement or much attempt to escape justice. Such cases may recur under the best Government, and can be wholly put down by no Police—183 murders are reported during 1859, exclusive of the smaller number in which murder attended crimes against property. The proportion of convictions obtained is not so good as we might have hoped. Violent crime against property has not been very rife. Deducting from the

number of dacoitees a large proportion which were, in fact, the last sparks of the expiring war on the border, the number of cases is not, under the circumstances, large. But the crime is one which may now not improbably increase (perhaps has of late months already increased,) and which must be very carefully guarded against

18.—In the District Criminal Courts 8,464 cases, involving 17,421 persons (being, I should guess, about one in every 400, or 500 of the population,) have been brought to trial, of whom 10,309 persons have been convicted or committed to higher Courts, 6,226 have been acquitted, 273 have been ordered to find security for good conduct, and 257 remain under trial at the close of the year. The business has been promptly and satisfactorily disposed of.

19.—Of the persons convicted and punished, no less than 1858 are offenders against the orders for disarmament, and this is exclusive of the large number of persons summarily punished for this offence by the Police Officers under the powers given them for the purpose, so that the offence of concealing or withholding arms has altogether, throughout the year, occupied a very large place in the criminal administration; Most of the punishments for this offence are summary fine or stripes; some large landholders have suffered heavy mulcts for retaining guns and ammunition.

20.—Upwards of 3,000 persons have been punished for thefts and robberies, about 300 for serious assaults and attacks on the person, and about 1,000 for petty assaults; 32 persons have been convicted of forgery, 49 of perjury, and 30 of coining or uttering base coin, while 3,382 persons have been punished for the minor and miscellaneous offences detailed in the second statement.

21.—Among these latter offences, I may observe 160 persons convicted of bribery and corruption, which is exclusive of punishments of their men for the same offence by the Officers of Police. The number of policemen,

convicted of this crime, has certainly been large, but in justice it must be said that while the temptations to a new force were great, the superior Officers of the force have exerted themselves laudably to bring the guilty to punishment, so that although there have been more convictions, and, perhaps some bolder and grosser cases, I believe that there may probably have been less petty bribery, or feetaking than among the old police or at least not more. There are also a considerable number of persons convicted of extortion and illegal duress, some of which are police cases. During the disarmament, doubtless, not unfrequent instances of unlawful violence occurred and some serious cases were brought to trial. There is always, too, in this country, among a new and unskilled police a disposition to make a short cut to detection by forcing confessions. But all this will be, I hope, gradually cured.

22.—The number of persons convicted of breach of the Abkaree and Salt rules is considerable. The smuggling of liquor for the European Soldiers is now most properly punished with summary severity. The high duty upon salt has rendered the smuggling of that article extremely common. A large number of persons are entered as convicted of resistance of process, but there has really been very little serious crime of this kind, and I think that there is some mis-arrangement in putting under this head many very petty cases of disobedience or neglect of duty. A great many persons were punished for gambling; chiefly by the City Magistrate of Lucknow, but I thought that the looseness of the law, on that subject, was abused, and obtained through the Chief Commissioner, the sanction of Government to the introduction of the most important Clauses of Act XXI. of 1857, by which the law is well defined. No less than 164 persons have been brought to trial, and 71 punished for attempt to commit suicides. The full number of miscellaneous offences is only made up by entering in the lump the total of the return of the Cantonment Joint Magistrate of Fyzabad [illegible]

[illegible] send a list of offences punished by him which has been returned for explanation

I have tried in some degree to remedy the uncertainty and undefinedness of our Criminal Law as regards minor offences by carefully revising and classifying the list of these delicts, and requiring all Officers to confine themselves to the prescribed list, and not go off into fancy crimes All supposed offences, not found in the list are to be referred to the Judicial Commissioner The District Officers have, I am happy to say, kept well within the prescribed limits.

23.—*Increased Powers.*—I formerly expressed my opinion that the increase of the powers of District Officers was a great advantage in enabling us to get rid of the objectionable practice of passing judgment upon the record only. I am more and more of that opinion, and further think that the Deputy Commissioners have generally used those powers discreetly and well, and that the change promises to be advantageous in many respects. A competent Deputy Commissioner, relieved of police duties, may well try criminal cases of considerable importance. Even if Superior Officers were available really to try such cases it may be doubted whether the delay and hardship to the parties and witnesses and want of means of local enquiry attending the usual system of Sessions trials, do not more than counterbalance the advantage of greater experience and higher judicial position. I formerly, in some degree, reserved my opinion on this point, but it now becomes quite favorable to the present system.

24.—*Punishments.*—Statements Nos. III and IV. shew the various sentences passed and punishments inflicted in each District, and the detail of the operation of the new system of using, preferentially, stripes and fines in the greater number of cases The proportion of acquittals to convictions, and of the different kinds of punishments to one another, vary considerably in different Districts, but there have been so many disturbing cases that although I note the figures for future comparison, I do not at present think that I can safely draw a definite deduction. As the District returns do not shew the result of cases committed to higher Courts it will be convenient

that I should here exhibit synoptically the whole of the punishments inflicted by the Judicial tribunals in the Province during 1859.

STATEMENT shewing the whole of the punishments inflicted in the different Courts of Oudh, during the year 1859

Tribunal.	Death.	Transportation.			Imprisonment.			Flogged.	Fined.	Out-lawed.	Dismissed	Security.	Grand Total.
		Life.	For terms.	Total.	Above 3 years.	3 years and under.	Total.						
Judl. Commissioner, ...	42	38	13	51	9	8	17	0	1	1	1	0	113
Commissioners, ...	0	0	58	58	21	27	48	27	22	0	0	1	156
District Officers, ...	1	0	83	83	42	1,408	1,450	3,599	5,883	73	77	293	11,459
Total, ...	43	38	154	192	72*	1,443	1,515	3,626	5,906	74	78	294	+11,728

* And of these 9 afterwards deported beyond sea by Order of Government.

+ Including double punishments

It will be seen that 43 persons have suffered death, and 192 have been sentenced to transportation, of whom 38 life prisoners might have been transported under the old system and 154 have been transported for terms under Act XXII. of 1858. Of these latter, 108 are transported for terms above 3, but not exceeding 7 years, (chiefly I think for 5 or 7 years,) and 46 for terms in excess of 7 years (generally from 10 to 16 years)—1,515 persons have been imprisoned, but the larger number of these are for short periods under 6 months—3626 persons have been subjected to corporal punishment, and 5906 persons have been fined.

25.—*Transportation for terms.*—The result of the new system of transportation for terms depends on many considerations and circumstances regarding which we have no sufficient information, but meantime there can be no doubt that it is the most effectual of all punishments as a deterrent, and, in the absence of any objections beyond our cognizance, we have freely used the power to transport, and applied it generally as the rule to all heinous cases of a deep dye involving long terms of imprisonment. On the whole of persons sentenced for terms in excess of 3 years, about three-fourths have been deported

26.—*Summary Punishments.*—Statement No. IV, gives details of the Offences for which stripes and fines have been awarded. For retention of arms, 1653 person have been fined, and 526 flogged by the District Officers, while for theft and similar offences about 300 persons have been fined, and upwards of 2300 flogged.

There remain nearly 4,000 persons fined for various petty offences, for which that mode of punishment is, I think, unobjectionable.

There may be more question regarding the residuum of about 800 persons flogged for various offences other than retention of arms and theft. A number of persons have certainly been improperly flogged for assaults and other offences, for which the punishment is not authorised by Government Order, but I have long ago taken measures to put a stop to such irregularity.—50 persons have been flogged for corruption, and 27 for extortion; 27

persons appear as flogged for perjury, and 47 persons have suffered a similar punishment for gambling, (a circumstance which attracted my attention and caused my interference) Of the total number of persons flogged, not one received more than 100 stripes under the powers conferred on Commissioners by Government to order up to 200 stripes, and by far the greater number received but from 15 to 50 stripes. 489 persons received from 50 to 100 stripes, 2,818 persons from 15 to 50, and 389 persons not more than 15 stripes. 1,103 persons were subjected to double or treble punishments, fine and stripes being combined, or one or other or both being combined with imprisonment; while 204 persons were flogged on account of non-payment of fine. I am inclined to think that, in many cases the combination of punishments has a good effect, and that we are thus more likely in one way or other to touch a man's weak point. But of course in very many cases we desire by summary punishment to keep a man out of Jail altogether. In my former note, I expressed some opinion regarding punishments. The local officers have, in their reports, made many very good and intelligent remarks upon the subject, and I think that these generally tend in the direction which I have already indicated on the subject of corporal punishment

27.—*Fine.*—I formerly broadly said that fine is so far as it can be exacted, an unobjectionable punishment in all cases Some of the Local Officers do not quite endorse this statement, and I am inclined to think that there is a good deal in what they say, viz, that it is a punishment very difficult fairly to enforce, and especially that in the very large proportion of the cases in which crime is more or less the result of want, to sell up the little property there may be, must tend to fresh crime. Doubtless considerable discrimination must be used in inflicting fine as a punishment

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28.—*Corporal Punishment.*—As regards corporal punishment, I am more and more convinced that there was much exaggeration in the idea at one time entertained by many Officers, of the almost universal efficacy of this punishment; and in this I am borne out by the opinion of the great majority of the most inteligent Officers. We, certainly in former days, went a great deal too far on the side of excessive horror of degrading sentences and threw away one of the cheapest and in many cases most efficacious

modes of punishment without supplying any adequate substitute. That the large use of flogging is an immense improvement on our previous practice, and very beneficial to the interests of justice, and the morals of the community, I have no doubt. But that the great criminal question is thus solved, that we have found the *panacea* for all our difficulties, is one of those rough and extreme ideas, engendered by the mutiny of which we must now rid ourselves. In saying this, I am by no means setting myself against the practice prescribed by Government, for I believe that Government never intended that it should be carried to an extreme. Not only is it unfair and undesirable to inflict a degrading punishment for offences which are not always accompanied by moral turpitude, and for which it has not been prescribed by law, but it becomes every day clearer that for serious crimes of turpitude such corporal punishment, as we can inflict, very frequently proves a wholly insufficient penalty; that it is uncertain, unequal, and precarious in its operation, and that there is a tendency among officers to avoid its infliction to the extent which would make it effectual, and to allow our practice to degenerate into too great leniency. Officers have been warned against this, and it is true that what is part of their duty they must perform without shrinking from it. But still I think that as was said by one of the Deputy Commissioners (Captain Thompson) in a large proportion of thefts and such crimes, flogging alone cannot be effectual unless it is carried to the point of brutality. It can only be effectually administered with certainty and safety under the immediate and close personal superintendence of the European Officers. And I think that we must not too much turn our Judges into executioners. I look on this, in fact, as one of the principal difficulties of the system. The constant participation in such scenes must have, more or less, a brutalising effect on almost any man's mind, and must tend to perpetuate that harsh and severe feeling which not unnaturally resulting from the scenes of 1857, it must now be our object to soften down and eradicate.

29.—*Jails.*—I think, then, that, after all, unless some heaven-born expurgator shall devise some wholly new punishment, not yet thought of, we cannot get rid of the large use of imprisonment, and must return to the yet unsolved problem of efficient Jail discipline. I by no means yet despair of seeing our Indian Jails become places of real discipline and wholesome punishment. I have already turned my attention to the subject, and called

that of Local Officers to it, and I have received several useful suggestions and seen some endeavor to put them in practice. But it must be confessed that our Jails in this Province are still at the lowest ebb. Officers have had much to occupy them, and the provision of accommodation for our Soldiers and other public requirements have monopolised all resources. During my recent tour, I have been disappointed to find how little progress has, in many districts, been made towards erecting the small model houses of correction long since prescribed and sanctioned. I have urged on District Officers to permit no further delay. Divisional Jails we have none, except at Baraitch and that is to be abandoned on account of unhealthiness. But I trust that the intention of the Chief Commissioner to provide for the speedy erection both of those and of the Central Jail at Lucknow will speedily be fulfilled. I have separately noted my observations and wishes on these subjects, and need not here repeat them. At Lucknow only is there now a decent Jail capable of holding about 800 prisoners, and which stands for the present though eventually it is to be demolished on Military grounds as too near the fortifications. In arrangements for separation, discipline, and security it is deficient, but in respect to comfortable and apparently healthy accommodation, air, area, and every thing else which should promote health according to all sanitary laws, it is about the best Jail I have ever seen. The barracks are, I might say, fit for European Soldiers. Yet it is but one of the circumstances which year after year come out in the course of practice to shew that the sanitary science is not only in its infancy, but, if I may so express it, yet almost unborn, that for many months past this Jail has been unhealthy beyond all precedent, and a frightful number of prisoners have died without epidemic or intelligible cause, while in the only District in which there has been literally no Jail of any kind, and the prisoners have been kept in all weathers huddled together in an old tent, the return of sickness and deaths is blank, and, in reply to my call for explanation, I am assured that literally no one has been ill in the course of the year. Most anxious endeavor has been made to discover the cause of the sickness in the Lucknow Jail, and Dr. Douglas, the Civil Surgeon, has been unremitting in his attention. But all consultation has failed to discover any cause, and as a last resource the prisoners have now been removed to the Moossa Bagh beyond the town. The Jail Returns have been made up in a new and compendious form, and exhibit the particulars of Jail statistics. The total number of persons in confinement at the end of the year, was 1,346, of whom 982 were prisoners sentenced to labor, 26 without labor, and 248 under

trial. There were also in the Jails 53 Civil, and 9 Revenue prisoners. Of the working prisoners, 517 were employed in manufactures, 42 in printing, and the remainder in various other occupations. The proportion of deaths in the Lucknow Jail was, I regret to say, as much as 20 per cent. on the average number confined, and if the year had been taken from March last to the present March, I fear that the proportion would have been still heavier. Some of the deaths were caused by an out-break of cholera, but the remainder are due to general unhealthiness. It would be useless to dwell further on the subject after what I have already said. Dr. Douglas has furnished a special report. The only other decent Jail at Baraitch has also been unhealthy. But fortunately at all the remaining stations, where the prisoners have been kept in the most wretched hovels, the mortality has not averaged much above 3 per cent. which is very satisfactory. The cost of the Jails on their first establishment, the number of prisoners being very few, is of course, disproportionately large, if the whole expenses be calculated per head. But as a certain establishment must be entertained, this cannot, under the circumstances, be helped. The sepoy guard is hardly a fair charge, and the remaining charge, if relatively to numbers high, are positively small. The whole cost of Jail establishments has been Rs. 55,333, or excluding the sepoy guard Rs. 37,841. The diet of prisoners has cost, on an average, about 1 rupee per mensem per man, which is reasonable, and the total cost for the year, of each prisoner, exclusive of permanent establishments, is about Rs. 23 per man, which does not seem excessive.

30.—*Duration of cases.*—The Statement marked No. V. shews the average duration of trials in each District, distinguishing those in which the police are employed from those in which they are not. It will eventually be useful, but, like other comparative statements of the present year, does not yet afford safe grounds for confident comparison. It may be remarked generally that the procedure seems to have been most dilatory in Baraitch, Oonao and Mahomdee. There will now be this additional difficulty in the comparative statements, that whereas formerly, when the same man was Magistrate and Superintendent of Police, if delay occurred, or the proportion of convictions, acquittals, &c., or other result was very abnormal, he was, as it were, on the horns of a dilemma, since, either his Police must be in fault

or his Judicial proceedings were unusual; whereas now it may be difficult to distinguish between the short comings of the police and those of the Magistrate. I am glad to hear that the Secretary, to the Chief Commissioner is devising statements to shew separately the working of the police.

31.—*Summary of District Criminal business.*—Statement No. VI shews the total criminal work of each district, Lucknow is much the heaviest. The district is quiet and ordinary, but the great city, of course, gives a very large amount of work. There is both a heavy influx of ordinary criminal cases, and there are a good many, and will be more, delicate cases of forgery, perjury, fraud, &c., &c., in addition to which there has fallen on the Deputy Commissioners the investigation and commitment of some of the most important political cases, a duty which he has zealously and well performed.

The District Superintendent of Police, Captain C. Chamberlain has, I believe, a speciality for Police duties; and in his case, I think that there is only wanting a well defined and regulated position with reference to the Magistrate and perhaps some reform of the disposition shown by some Police Officers to use too much the vernacular writing omlah, to render the institution of a Superintendent and organised Police benificial.

32.—Most of the ordinary criminal work of the city is done by the Assistant Commissioner subordinate to the Deputy Commissioner, who holds his office in the city as City Magistrate. Nothing can be more important and interesting than the working of the City Police and Magistracy. But I think that something is wanting. The City Police Superintendent is willing and zealous, but very inexperienced. He requires the guiding hand of an able, firm, and clear headed Magistrate. Mr. Wood is a most deserving Officer, possessed of many qualifications, but I do not think that, he is sufficiently original to give a fair start to a new system, and the Deputy Commissioner, oppressed with very many duties, has not been able thoroughly to take up the minutial of the working of the City Police.

23.—Fyzabad is the next district in point of criminal work. The Superintendent of Police is favorably reported of, and his Police are stated to have been successful with violent crime though they fail in getting up cases. Taking heinous offences only, there is, perhaps, as much or more crime in the Durriabad District, which has certainly the distinction of being the part of Oude in which there is a much larger amount of *rural* crime than in any other district. The officers of police had been frequently changed, and the Police do not seem to have been successful.

In a great degree owing to its proximity to the frontiers, the scene of the war, the Gondah District has been one of unusual importance in its criminal administration during the past year. Great complaint is made of the failure of the Police in civil duties, and the Returns certainly exhibit very unfavorable results. Roy Bareilly, Sultaupore, and Pertabgurh are average Districts, and in all three it appears that the Superintendents of Police are good men, and that only a regulated subordination and an improvement in the practice of the police in getting up cases, &c., is required to render the system beneficial.

The entire untrustworthiness of the returns of crime for Lukheempore shew the police to be defective.

Further remarks on the qualifications and conduct of the District Judicial Officers, I reserve to a subsequent part of my report.

34.—*Trials in Commissioners' and Judicial Commissioners Courts.*—Statements VII. and VIII. give the details of trials in the Commissioners' Court and in that of the Judicial Commissioner. The following Statement shews synoptically the number of Criminal cases and appeals or revisals disposed of by each Commissioner.

Division.	*No. of persons tried.*	*No. of appeals disposed of.*	*Total.*
Lucknow, ...	93	79	172
Seetapore, ...	91	56	147
Fyzabad, ...	82	55	137
Baraitch, ...	60	88	148
Total, ...	326	278	604

The Political trials and city cases render the Lucknow Division the heaviest. Much praise is due to Colonel Abbott for the careful, thorough, and impartial way in which he has conducted several important political trials which have come before him. There are, I think, an unusual number of murder cases in the Sectapore Division. Otherwise the work of the 4 Divisions is pretty nearly balanced. The ordinary work of the Commissioner of Baraitch is lighter than the others, but he seems to have more frequently revised the proceedings of the subordinate Courts. The Commissioner of Fyzabad imprisoned more and flogged less than the other Commissioners. The duration of cases is considerably the longest in Fyzabad, and shortest in Sectapore; but I should also say that the investigations in the former Division had been more searching and complete.

35.—In my own Court besides the offenders convicted of murder and maltreatment of Europeans already alluded to, 56 persons in all have been convicted of murder as principals or accessories, and 17 of minor offences, making 110 in all, with 11 acquittals. The different punishments inflicted in my own and the Commissioners' Courts have been already shewn in the Statement embodied in para. 24. I have sentenced 42 persons to death, 38 to transportation for life, and the rest to minor punishments. I may state here that in my opinion in this country transportation for life has to many, if not to most men, as great or greater terrors than death. If, then, it be as effectual or more so as a deterrent, this mode of punishments has certainly many advantages over a sentence both irrevocable and so little capable of being weighed in human hands. I have thought it my duty to award death in the greater proportion of murder cases. But in other in which in another country death would have been the fitting punishment, I have seen reason to prefer this alternative sentence; especially in two or three cases in which men have committed brutal and senseless murders, confessed and expressed their readiness and expectation to be hanged, I have thought that justice required that they should be punished in the way most deterrent to such men, and have transported them in spite of clamorous remonstrances and protests founded on their supposed claim to be hanged like gentlemen.

36.—*Criminal Appeals.*—The Statements marked IX., X. and XI. shew in detail the result of appeals from, and revisals of the orders of, each Officer in the Appellate Courts of Deputy Commissioners, Commissioners,

and the Judicial Commissioner; but these also do not afford sufficient ground for comparative induction.

The following is a synopsis of the whole :—

Appellate Tribunal.	*Total No. of cases*	*Upheld*	*Reversed modified or returned*	*Remaining*
Judicial Commissioner, ...	40	30	10	0
Commissioners of Divisions, ...	279	200	78	1
Deputy Commissioners, ...	51	35	12	4
Total,.....	370	265	100	5

The number of decisions of Assistants and Tehseeldars reviewed by the Deputy Commissioner is singularlyfew, considering that two-thirds of the whole number of criminal cases, or upwards of 5,000 cases in all, were decided by those subordinates Officers. By far the larger number of criminal appeals and revisals, 279 in all, were in the Commissioner's Courts. Of these it will be seen that in 200 cases the order was upheld, while in 78 it was reversed modified, or returned for reinvestigation. Of the 40 cases in my own Court the decisions in 30 were upheld without alteration.

37.—*Civil Litigation Regular Suits.*—I now pass to the Returnsof Civil Justice. The Statement marked XIII. shows the number of regular Civil Suits filed and decided in each district of the Province, the general classification of the decisions, the value of the property so disposed of, the average duration of cases in each district, and the percentage of costs.

38.—The greater part of the Civil litigation of the Province occurs in the City of Lucknow, the greatest and far the wealthiest city in India. the Presidency Towns excepted. In numbers upwards of one half of the suits, and in value about 98 per cent of the property in litigation appears in the Lucknow District return. In the remaining districts there has been during the past year a pretty uniform paucity of suits, the largest number being 243 in Fyzabad, and the smallest 106 in Roy Bareilly.

In truth the storm had hardly sufficiently passed away to give place to the civil litigation which belongs to peace. But this is now fast increasing. In Lucknow there were a good many large important cases involving the disputed inheritance of large property of persons who had died during the year of anarchy, or resulting from the violence and frauds of those days, especially the abstraction and transfer of Government Promissory Notes for large sums. There was also a considerable influx of difficult cases of a commercial, personal, or European character, necessarily arising in so great amart of money, and so large and important a station.

39.—In the whole, 3695 regular suits were on the files of the different Courts during the year; 3242 were disposed of; of these in 1794 cases decrees were passed in favor of the plaintiff in whole or part, viz., in 1057 cases for the whole claim, and in 737 cases for part only. Of the cases so decreed 1174 were decided on trial, and in 620 cases judgment was passed on the confession of defendants.

In 536 cases, the decision was absolutely in favor of the defendant—537 cases were adjusted by the parties without a judicial decision, 340 cases were withdrawn, nonsuited or struck off, 354 cases only were pending at the end of the year.

40.—The total value of the property disposed of by decisions was Rs. 1,31,72,113-1-5. In 1011 cases, the value did not exceed Rs. 20, and in 1388 cases, it was more than 20, but did not exceed 100. In 583 cases, it was from 100 to 500, in 242 cases from 500 to 5000, and in 18 great cases it exceeded Rs. 5000. The average duration of each case from institution to decision was something more than 28 days varying from 19 days in Gonda to 47 days in Pertabgurh.

41.—The costs incurred by suitors have usually averaged about 5 per cent, except that in Lucknow a few suits for very large amounts instituted before the new stamp rules and disposed of without any great expense have reduced the apparent average of costs to a mere fraction.

I should say too in regard to these returns of average duration, costs &c., that I am not confident that we can depend on their having been always quite correctly and exactly calculated from the first institution of the Courts with raw establishments, and, as I have remarked in my observations on the criminal returns, the average and comparative statements of the year do not afford a sufficiently broad basis for safe inductions.

42.—I am satisfied that the cases have generally been tried with creditable despatch and economy. The duration in Pertabgurh, Roy Bareilly and Oonao is certainly too long, but these are all rural districts and the cases few. The Civil business was in them probably allowed to be in the first instance a secondary consideration. But I trust to see great improvement in the present year. In Pertabgurh and Baraitch the number of cases pending at the close of the year is disproportionately large.

43.—Statement XIX shows the average value, duration and costs of suits in another form for the whole Province The duration seems to increase and the proportion of costs to decrease pretty regularly with the increase of value. The lowest class suits have lasted on an average 21 days which is, I think, too high for very petty cases, and the costs are about 7 per cent. The two next classes have lasted 24 and 36 days respectively, and the costs are about 5½ per cent The larger cases have on an average lasted 46 and 64 days and the costs shown are almost infinitesimal.

In future under the new stamp laws as the mere institution fee and first payment for processes will amount to 5 per cent on the value, we must expect some increase in the costs

44.—Statement No. XV exhibits the business of the Civil Courts other than regular suits for the whole province, but this is principally in the Lucknow Court

There is in Lucknow a very large amount of trust property, and I apprehend that the proceedings in regard to Bankruptcy, trusts, successions, the disposal of the estates of incompetent persons, and other matters such

as form the subject of Chancery Proceedings in England, must give very large employment to the Judicial Officers.

45.—*New system in regard to costs.*—Statement XVI. shews the receipts and disbursements on account of processes, but an entire change of system having been introduced in the course of the year, the statement is incomplete, and the figures somewhat confusing. It must be remembered that the payment in the lump, in composition for all processes, has been made in many cases in which cost of processes has yet to be incurred, and therefore the whole of the large surplus cannot be considered to be clear gain. Still my impression is that so far as we have gone, the result seems to be to give reasonable expectations that financially the scheme will give much better results than we had anticipated, and that there will be on the whole as things are now arranged a considerable clear profit, We are thus enabled to pay liberally the process servers. My hope is to secure for this duty a superior and responsible class of men, the value of whose places will be some security for their conduct. To render our procedure what could be wished, it is neces sary that these men should be in some degree educated and capable of performing various functions and making various reports in an intelligent and trustworthy manner. Very much indeed will depend upon them. I trust gradually to establish a regular service of good trained bailiffs. There had been at first considerable variety in the pay given to them, but it has now been settled that it is never to be less than 6 per mensem, and where the funds admit, and fit men are found, it will be 8.

There will be some difficulty in arranging about the regular charge and audit of these disbursements. Since the receipts being paid in stamps do not come into our hands, and it will always be necessary to check the statement of receipts, and provide for the necessary transfer of funds from one District or Court to another. There must often be a deficiency in the small cause Courts to be made up from the receipts of Courts in which the causes are larger and the expenses proportionately small. I have been in correspondence with the Accountant on the subject and hope that the thing will be arranged.

As regards the essential merits of the scheme there has not been a long enough trial to enable me to give a confident opinion. There can be no doubt that it is an artificial arrangement Naturally the cost of process in small suits must undoubtedly be much greater in proportion to value than in large suits. We now charge for all such expenses, a uniform per centage upon all suits, and in so far we certainly tax the large suitors in order to give cheap justice to the small suitors. We charge the one class more than the service rendered really costs and we do the service for the other class for much less than its cost—It is quite matter of opinion whether that is droper or not, there is no doubt of the feasibility and I think I may say of the financial success of the plan. The points upon which question may arise are, first, whether too great facility may not be given to petty litigation under our system which excluding professional agents and hearing every man in person enables every man or woman to be his or her own lawyer, and second whether the power of obtaining service of processes for nothing after the first payment is once made; may not be abused by two frequent applications for processes from which a moderate charge for each would have deterred the suitor.

As regards petty suits, the present practice does in fact very nearly come to the Benthamite principle of maintaining the machinery of justice at the public cost and furnishing it gratis to all comers, with the addition of an absence of all private expenses which could hardly be contemplated in any European Court. A litigious man with a suit for Rs.5 may now in his own person carry it through all the Courts of Oude original and appellate and exhaust every variety of process at a total cost of a very few annas, not amounting to half a rupee in all. Whether this may lead to abuse is a problem to be solved by prolonged experiment.

On large suits the tax is not light, 5 percent on the amount claimed (not decreed) paid in advance is a considerable sum in such cases, but I do not know that it need be considered too heavy an impost in this country were a good deal is to be said on the side of deterring from litigation

46.—*Arbitration and Jury system.*—Statement XVII shows the number of cases settled by arbitration It is, I think, small in comparison to the previous Non Regulation practice. No orders discouraging arbitration

have been issued unless the clause of the Government orders of 1858 condemnatory of Juries has been so construed. But those orders also referred us for guidance to the previous orders (of 1856) for the administration of Civil Justice and the orders of 1856 especially dwelt on the use of Punchayuts and arbitrators. I have in all my instructions assumed this mode of decision to be common. I am therefore unable to account for the indisposition to call in the assistance of arbitrators which I have for some time thought that I have observed. In the Punjab there was at first too great a dispositon to throw every thing over to arbitrators in a rough and unregulated way, without any ascertainment or definition of the issues, in fact to throw upon them the proper work of the Court. This was certainly productive of evil and it was very properly checked. There may, in fact, have been some reaction of feeling against the frequent use of arbitrators. But still I am far from feeling so confident in the capacity, patience, and certainty of our courts as to think that we can safely dispense with this assistance in a large proportion of cases. There can be no doubt that cases which can be decided with confidence and promptness by a skilled judge will be more quickly, cheaply, and satisfactorily decided by him than by a reference to arbitrators after our native fashion. But when there is grave doubt about the facts, and the decision is after all but a balancing of probabilities, or when the investigation requires minute and very careful enquiry such as our Judges may be from foreign ignorance incompetent, or from press of work unable to conduct, and in some cases which require a judicial knowledge and habit of mind not always yet obtained, I think that reference to arbitration is very desirable. Doubtless it is a dilitory proceeding, doubtless to conduct it properly may in many or most instances require more care and trouble on the part of the judge than to decide the case in a rash way himself, doubtless the decision of such tribunals is somewhat uncertain and little guided by precedents. But after all in the present state of our tribunals I believe that the decision is in some suitable cases more likely to be correct than that of the judge, and I think that if there is error and uncertainty it is better that those faults should be those of the countrymen of the parties than of the Judge.

47.—I therefore approve of a frequent reference to Arbitrators of the issues in Civil Suits. But great discrimination must be used in distinguishing cases most fit for arbitration, and above all it must be the invariable

rule that before reference is made, the issues are clearly ascertained, and clearly put to the arbitrators in writing.

48.—There is apt to be a good deal of misapprehension about terms. In England arbitration and jury trial are two things as widely different from one another as possible. In this country our punchayet or arbitration system is generally something intermediate between these two. It is not a reference to one skilled person to unravel an account or decide a disputed point out of Court, and it is not an open trial in Court before a jury and, prompt verdict under the immediate superintendence of the Judge. There is the appointment of several persons who are collected together and act partly in and partly out of Court partly under the Judge, and partly independent of him, who sometimes, and in some respects act as ordinary arbitrators, but as often perform functions more analogous to those of a jury, and after consulting together deliver a verdict in Court.

49.—I am inclined to prefer a greater approach to the English practice. I would either refer to the proper arbitration of a competent person, or when we are to have a large punchayet I should like to try to approximate to the jury system. The clause of the orders of Government (para. 29 of Secretary to Govt., Foreign Department's letter No. 3502, dated 6th October, 1858,) is so broad as almost to put me out of Court on this subject, but I would respectfully submit that the same opinion has not been promulgated for the guidance of the Judicial functionaries of other Provinces, administered by the Government of India. I may especially mention Mysore. During a recent tour in the south of India, I looked particularly into the arrangements of that Province, and I there found that in judicial matters almost exclusive reliance was placed both in civil and criminal trials on Juries, and that the Mysore jury approached our English idea of a jury very much more nearly than any thing I had previously seen in this country, the jurymen being taken from a regular Roster (not nominated by the parties,) and sitting in Court there to hear the case, and there consult and deliver an effective verdict which is rarely, if ever set aside. Doubtless the jury are frequently more left to themselves, and the Judge may exercise a less close superintendence than in an English Court, but I have certainly watched the trial of a civil suit before a native judge in which the relation between the Judge and the Jury was as effective and real as in an English Court and I will

add, the Jury as intelligent, attentive and prompt to decide as any Jury that ever sat in Westminister Hall. Of course it is dangerous to found an induction on too narrow a basis, and a brief visit to a strange country cannot suffice for the formation of an independent opinion, but I will say that all the Officers in Mysore were strongly in favor of the advantage on the whole of the employment of juries, and that the impression I brought away was favorable.

Perhaps the remarks of His Lordship the Governor General have greater reference to criminal cases, in which certainly the employment of juries has been attended with considerable difficulties and drawbacks in this part of India. But as regards the trial of civil suits, I hope that we may be permitted to make the experiment.

50.—*Classification of Suits.*—Statement XVIII. exhibits the classification of the different descriptions of civil suits in a natural, rather than a technical order. Here as in other parts of India, cash debts form the great staple of litigation.

The number of inheritance cases entered is small, but there have certainly been in Lucknow several such cases of peculiar importance and difficulty, involving most complicated questions of law to which we have scarcely found a safe key. Not a single adoption case appears. The number of claims to hereditary and customary fees is considerable, but I have lately passed a decision which will be a precedent to throw out most of these cases in future. I ruled that such fees were usually not a right as between the payer and the recipient but voluntary only; that when there was no right there could be no remedy as between different claimants of the right to make these collections; that there must be free trade in priest-craft and other arts and professions, and that suits could only be founded on the ordinary laws of voluntary contract between man and man. The other headings, under which the suits have been grouped, will explain themselves.

51.—*Civil Appeals.*—Statements XIX., XX. and XXI. exhibit the appeals tried by Deputy Commissioners, Commissioners, and the Judicial Commissioner, respectively. The following is a synopsis of the whole :—

Civil Appeals and Revisals.

Judicial Tribunals.	*Number of Cases.*	*Confirmed*	*Reversed, modified or returned for further investigation.*	*Pending*
Judicial Commissioner, ...	29	21	7	1
Commissioners of Divisions, ...	175	96	65	14
Deputy Commissioners, ...	222	140	58	24
Total,...	426	257	130	39

52.—The number of appeals was, it will be seen considerable, and of those in 257 cases, or about two-thirds of the number appealed, the decision was unreservedly upheld ; while in 130, or about one-third, it was reversed, modified, or returned for further enquiry. But this last figure, by no means, involves final reversal of the original order, for again in nearly two-thirds of those 130, or in 84 cases, the Appellate Court ordered further investigation, while it reversed the original decision in but 23, and modified it in but other 23 cases. I do not think that this result is to be regretted. The great fault to be found with our Courts is, without doubt, the disposition to pass summary and incomplete decisions without sufficient reference to the real point at issue. It is comparatively seldom that a superior Court can with confidence, from the record only, find disputed facts in opposition to the opinion of the Court which heard the witnesses, but it always can and ought to see that the lower Court has thoroughly done its duty, has decided all that should be decided, and has not shirked a difficulty or got rid of a case by some side path or some short cut to the disposal of business. Under our system, I have often heard it remarked, that to send back a case for fresh enquiry is the worst course of all. "Reverse an order or uphold it" is said "and let there be end of the matter,

If the case is sent back there will only be fresh trouble and sorrow to all parties, and it is ten to one that the lower Court somehow or other arrives at the same opinion still." There is in fact a great deal of truth in this. But I look upon it as evidence of a want of Judicial frame of mind. The principle of action recommended and followed is one suited to executive, but not to Judicial duties. I look upon it as a test of a man's fitness for the latter that he can debarrass himself of prejudice and of all that is not fairly before him, *e. g.* accept the ruling of a superior Court in respect to the law, the issues, the *onus* of proof, or any particular point, and from that point or on that basis fairly and legitimately proceed in a straight course.

During the past year a large proportion of the Civil appeal work has fallen upon Colonel Abbott, the Commissioner of Lucknow, who has most carefully and well supervised the proceedings of his subordinates. But the Lucknow appeals will now much facilitate his general business, and put the relief from the Division more on an equality with the charges of other Commissioners.

53.—Our Courts have not reached that point of consistent practice, or our Officers generally attained that judicial frame of mind which might enable us to presume as the rule that in ordinary cases there will be nothing to alter or animadvert upon, and till this is the case we must have appeals. I look on the question of appeals as one entirely dependent on the certainty and judicial consistency of the lower Courts. When the law and practice is fixed, appeals are rarely necessary; till they are so, we cannot leave every thing to the varying character and opinion of individuals. The question of appeals is, therefore, one respecting the qualifications of the lower Courts, not a separate and easily solved question.

54.—*Civil business of the Judicial Commissioner's Court.*—The number of regular appeals, which reached my own Court in 1859, was not very large, but it is greatly increased in the present year, especially as regards the appeals which now lie from the Civil Judge of Lucknow to the Judicial Commissioner, and which in fact include almost all the important civil suits of the Province. From 1st January to 26th March 1860 in all 74 fresh appeals have been filed in my Court, and I have had before me a very large amount of civil business in the way of superintending and guiding the newly instituted Courts, regulating their procedure, and from time to time criticising and commenting on their practice.

55.—*Civil Procedure.*—The Civil Procedure has been the subject of much discussion and correspondence. This is one of the subjects on which, when we have discovered the best system, the advantage of uniformity of practice in different Districts and Provinces must be very great, and in which we must always have much to learn from the skill and experience of those who have devoted themselves to the particular subject. The new procedure of the Regulation Provinces being in fact in the main a certain approximation to that hitherto followed under the Non-Regulation system, with the advantage of a systematic arrangement and provision for all details, I have from the first been anxious to meet it, so far as it was consistent with our local circumstances and practice. While the Procedure Act was yet passing through the Legislature, I framed, with the concurrence and assistance of Mr. Montgomery, for the guidance of our Courts, some brief and simple rules which may be regarded as a sort of easy introduction to the practice of the New Code, with a few varieties and modifications. The principal difference in our practice and views have been detailed in the correspondence on the subject of the New Code, which has now, by direction of Government, been prescribed as a standard and guide on points not provided for by local rules. Our own rules and practice have again been much amplified and explained by a succession of Circulars, Orders, and leading decisions. After all a Code is anywhere a great undertaking, and when we have not machinery sufficiently powerful for such a work, it may be the best and safest plan to provide carefully as each question arises *prore nata*, and afterwards to digest and arrange the whole One is less apt to err when a thing comes before one in practice than when we deal only with abstract ideas. We have got so far that I hope the time may soon come when by comparing the whole of our local instructions and experience with the Procedure Act of the Legislative Council, our procedure may be compendiously digested into a simple set of ample rules. Now that I am proceeding on leave, it is too late for me to undertake this myself, but I have lately very carefully compiled an Index of all the Orders and Precedents, affecting Civil Procedure, and I hope that with this, in their hand, Officers will find a ready guide to their conduct in civil proceedings.

56.—Above all things I am in practice more and more convinced of the advantage, nay, necessity, in the trial of civil suits of eliminating and stating the issues by certain simple rules of pleading, similar to those used in the English Common Law Courts. It is astonishing how vague, if not wrong, a man most frequently is when he attempts to bring out the issues in his own

language according to his own plain common sense, how often he rambles off into long stories concerning what the plaintiff, or defendant, or some body else had said or thought, and instead of a simple issue of payment thinks if necessary to find, whether the plaintiff's grandfather was a rascal and beat his wife, with many other particulars, while he forgets the question of payment or no payment altogether. I have issued several detailed Circulars on this subject founded on considerable practice in pithily abstracting the issues in English cases, and trust that some good has been done. The issues are now, by some Officers, very fairly stated in half a dozen words. And it only shows how much something of the kind was wanted that the only remaining difficulty is to get Officers to stick to the issues which they themselves have noted and distinctly to resolve them I have very recently put the thing into such a shape, that the pleas *must* always be in the eyes of the Judge, and trust that it will be no longer possible for him to ramble off or to shirk (as has been too frequently the case,) the real issue which lies before him, and compromise with his duty by deciding something else.

57.—I have insisted on the appointment of a day for the trial of each case, and the keeping up of regular cause lists, and my endeavor has been to give to trials in our Courts something of judicial regularity and publicity, and to obtain a *bonâ fide forensic* confront and conflict of the parties and witnesses, and an open and prompt decision, rather than a loose, irregular slipshod way of hearing the plaintiff one day, and then a witness another day, and then a defendant and then another witness, and then the defendant's witnesses just as they come in, and the Judge can attend to them in the intervals between half a dozen other cases similarly taken up here and there by little bits, and eventually decided on a perusal of the papers at no time or place in particular. I trust that much progress has already been made. But in going round the districts, I was not satisfied that the system of regular cause lists, &c., had been sufficiently tried. I still could not find that a man who had a case could invariably, without any favor or fear of the omlah, see on a conspicuous board exactly when and for what stage of the proceedings his case was to come on, and count with confidence on its coming on accordingly. Some Officers say that there are yet so few cases that it is not worth while to be regular, and make other such excuses. Doubtless so far before the country was settled, and while the Civil Courts were scarcely started, there was much excuse. But I do not think that there longer is

any; and I urge, that it is while the business is light that Officers can learn and institute a good practice which, when the files become heavy, will infinitely facilitate and lighten their labors besides promoting the interests of justice Nothing is more striking in comparing different statistics than the enormous *number* of the cases decided by regular and methodical Small Cause Courts compared to the small number by which irregular and unskilled Courts are burdened and choked.

I keep in mind that under our system executive and judicial duties being except in the city of Lucknow, united (and under the circumstances there are considerable advantages in the system.) I must not expect too much, that I cannot have that complete devotion and regularity which I should expect from Officers who had only judicial duties; but I am convinced that very much may be done without detraction from executive efficiency, and that when so much, as I require, is done, and then only the present system will be fairly tried. I would a good deal encourage the setting apart Officers from time to time (in a great degree at least,) for those duties for which they have a speciality. I should like to see the Civil Court work at the head quarters of each district a good deal in the hands of one Officer who is best fitted or can be best spared for it, and even to give experience to all I had rather that one Assistant should have charge of the Small Cause Court for a time, and then another take it, than that the cases should be distributed among all at the same time, and the suitor given over as a *corpus vile* to teach the young Assistant how to mismanage a civil case

58.—I have also thought that it would greatly promote regularity and the comfort of all the parties, and at the same time greatly facilitate the distribution of business if certain days of the week or month can be fixed as ordinary Court days, and the cases regularly called on and disposed of at these periodical sessions leaving the Officers free for other duties at other times. I hope on my return from leave to find that all this has been properly carried out

59.—The system by which decisions are at once certified to the parties whether for their information or for purpose of execution, &c., in a small printed form, and the necessity of the cumbrous and dilatory of endless copies of decrees spun out till they were measured by yards for the benefit

of the copyists is dispensed with, has been, I believe, a very great advantage There was probably more petty intrigue and fee taking in this process than in any thing affecting the trial or merits of the case

60.—*New rule of Limitation.*—The new and shorter period for the limitation of civil suits came into force from 1st October 1859, and the transition has taken place with a quietness which is most fortunate There had been comparatively few commercial and other transactions during the mutiny period, and men had little trusted one another. Suits for damages, done during the period of anarchy, have been shut out by order of Government, the country not having been our's, or the people protected at that time—and so it has happened that the notice of six months given previous to the new limitation though very widely and well proclaimed caused no unusual rush of suitors to the Courts, and no excitement. A few expiring cases may have been instituted, but generally speaking we have obtained the advantage of the change without the attendant draw-backs, which usually accompany any great change at the moment. Now, then, all unregistered debts are barred after three years, and registered debts after six years I retain the decided opinion that the change is in every way most beneficial. I have seen little or no real hardship resulting from the operation of the rule, and I am convinced that it shuts out an immense mass of fraud, and most harassing and injurious litigation

61.—*Substantive Civil Law.*—The compilation and digestion of the substantive civil law and custom of the country is a much wider and more difficult subject than any, on which I have yet touched, I have not been neglectful of the orders of Government to effect this object, and the moment I thought that circumstances admitted of it, I circulated (now some months ago) instructions to the Local Officers for the collection of information, and called on them to report on certain important points of local custom which I specified. As yet however. I have received but one reply from one Deputy Commissioner, Mr Capper, who has furnished a great deal of information in a report which evinces much ability, and for which he

deserves great credit. I have circulated it with further instructions for the example and comparison of other Local Officers. The laws of the country have also had my utmost attention in the important cases involving great questions of law which have come before me. In some we have been enabled to ascertain and record the established practice, in some the most complete investigation has only established this, that there has been previously no uniformity of practice, and that among totally opposite and unsettled precedents we must ourselves decide as we best can. But the whole subject is too large for this place, and I must postpone it

For the present I will only say that so far as I can see there are no fixed civil laws whatever in either Regulation or non Regulation Provinces-We are attempting to establish a legal system without any basis of law, or any sufficient machinery for forming Judge made Law.

The Mahomedan written Law is on certain particular subjects (such as inheritance, marriage, &c.,) only too precise, dogmatic, and inflexible, but it is in many respects wholly inapplicable to the modern and the Indian social state, and the consequence is that it has never been strictly adhered to, but has been varied at the discretion of native rulers, and is now only a source of great embarrassment The Hindoo law, on the other hand, is merely custom varying in every time, place, and family, and wholly unfixed and uncertain, and on all subjects common to the whole community, all social, monetary and commercial affairs, there is absolutely no pretence of law whatever. It is very much as if in England our only civil law were the old Testament for Normans, and the traditions of ancient English law as it existed at the time of Alfred for Saxons; and unskilled Judges were called on to decide all modern cases on those bases. Seeing the difficulty and, so far as one can yet gather, present hopelessness of the accomplishment of so great a work as a complete New Code of Civil Law, my opinion, (which was formerly different,) now inclines to taking an abstract of the most important passages of English law, including most of the modern statutes which codify the law on particular subjects, and making these after, a

little comparison. (to see that any few really well established customs are not without purpose altered) the *lex loci* on subjects common to the whole community. And I would, at the same time, codify and reform the Mahomedan and Hindoo class laws which would still apply on a few limited subjects. That is very much wanted. For instance, a Mahomedan law of marriage and legitimacy is a crying necessity in a country where the mass of women are no longer slaves, and the law of inheritance, though it may have been possible when flocks and herds were the sole wealth, is really not practicable when applied to landed estates, &c. It is also necessary to distinguish who is to be governed by Hindoo, and who by Mahomedan law. At present Hindoo families sometimes profess the Mahomedan religion; while they more or less follow Hindoo customs. It is almost like attempting to distinguish between Normans and Saxons in England.

62.—It will be proper that I should here notice the arrangements which have been made for the Lucknow Civil Court. In proposing the present arrangement, I explained the vast importance of that Court, and the magnitude, difficulty and great variety of the cases which came before it, and which makes it so much more important than any other Court in India out of the Presidency Towns. The appointment of a separate Civil Judge was, I am sure, a very great and most necessary improvement, No man, not devoted to the duty, could have done justice to such a Court, and the Deputy Commissioner and Commissioner of Lucknow had each many functions far in excess of those of other District and Divisional Officers, and which made it peculiarly impossible for them to do so. I trust and believe that Mr. Fraser is likely to fulfil the expectations which we have formed of the arrangement. The order which makes the appeal from the Civil Judge lie direct to the Judicial Commissioner is also, I think, beneficial. It was manifest that the most important cases must always in some shape or other eventually come before the highest judicial tribunal of the Province before they could be set at rest, and the chain of appeal was in this Province longer than anywhere else in India, so that there was either a long succession of litigation, or an irregular and uncertain cutting short of the process by extraordinary interference. It is clear too that the decisions of an experienced Judge, solely devoted to civil duties, can hardly with advantage be appealed to any Executive Com-

missioner for the time being, who is not specially devoted to that subject, and may, or may not, know any thing or nothing about it. My strong hope now is that sufficient strength and stability being given to the Lucknow Court, it may be worked under great, advantage, and may become a model for other Courts, and a large source of precedents in procedure and law by which all will be guided. The court shall always have my anxious attention. I have already officially and demi-officially done a good deal to settle its modes and practice in many respects, but of course much remains to be done. In Lucknow, especially, I think that the experiment of trial of difficult issues by a regular jury might be tested. I am trying to establish among the Merchants and Bankers some sort of Tribunal or chamber of Commerce to which difficult Commercial or Banking questions may be referred, or from which may be furnished a jury of experts to try them. I have ventured to lay down directions for a systematic procedure in cases of Bankruptcy which several instances shewed to be very much required. The succession acts have been adopted and are found well fitted to the state of Lucknow Society. I have discussed with the Judge the mode of dealing with trusts &c., and with questions conected with the estates of minors and other incompetent persons (for instance one of the Chief nobles of Lucknow the heir of a former well known Prime Minister is deaf and dumb and uneducated and his estate disputed.) A great deal as regards the strength required by the Court will depend on the decision whether the great *wuseequas* or trust funds left by former Kings in the hands of the British Government are to be left to the Administration of the ordinary Courts, as regards the numerous disputed successions &c., or are to be specially adjudicated. The degree to which family dissension and disunion prevails among the Chief Families of the Lucknow nobility is melancholy. Very many of the chief people have already got into the Courts in life and death struggles. None are more frequent litigants, than the numerous rich Begums left by a succession of Kings and Princes.

63.—*Insecurity of Property in Government Promissory notes.*—And I would here desire to draw particular attention to an important circumstance viz. that owing to the large amount of Government Promissory paper held by these ladies, the habit of objecting to appear in public, the insane way in which natives trust one another till they quarrel and then are without scruple towards one another, and more especially the confusion resulting from the mutiny, Government paper has become in Lucknow a most uncertain and precarious property instead of the secure and

easy investment for unprotected females, and such like persons which it would be for the advantage of Government as well as for the interests of Justice and the good of the community to make it.

The worst of it is that the matter is beyond our local competency, for suspicious notes are invariably sent off and negotiated in Calcutta to people who are beyond our reach. Great harm has I think, been done by the indis criminate ease with which the Calcutta Treasury seems to have been ready to receive any paper accompanied by half cash for transfer to the 5 percent loan. Almost all the fraudulent and forged transfers have been thus put beyond our reach, the holder exchanging them for genuine new five per cent paper which he again sells to an innocent (or not proved guilty) third party whose title is then complete. For the future at any rate I think it much to be desired that some arrangement should be made for the safe deposit of paper and the payment of interest without risk of fraudulent transfer of the capital.

The high degree of native art to which the inhabitants of Lucknow have attained much facilitates very refined forgery and fraud, and it is to be feared that we shall have much difficulty in guarding against these crimes.

64.—*Registration*,—In connection with the Administration of Civil Justice, I here notice the most important subject of registration.—Subsequent to my former note, the system which had been proposed has been sanctioned, and carried out. I append copy of the Registration Rules with the instructions which I issued at the time, and those promulgated since my recent tour; the first letter on the subject is also prefixed for reference. Statement No. XXII. shews the number of notaries appointed and deeds registered during 1859, but the system was only commenced in the latter part of the year. There was delay in preparing the books of a uniform pattern well secured against fraud, and the notaries were barely established in some Districts, and not established in others up to the end of the year. Still in a few Districts, 1,300 agreements were registered. More or less progress has now been made in all Districts, and in some, very considerable success has been already obtained. I confidently trust that the year 1860 will show much larger results. There can be no doubt that if we should

succeed, the success will be on a breadth and scale which has not only not been attempted, but not even, I think, proposed in any other part of India We propose to establish throughout the country trust worthy local notaries, cheap, easy of access, familiar to the people, and acting before the eyes of the local community, so that it shall be no hardship, but the common and every day practice of the people to attest before a well known Officer chosen from among themselves, their ordinary dealings and contracts, If this can once be obtained there is an end of that fraudulent litigation and strife in the Civil Courts which in the older Provinces has demoralized the country, and caused our administration to stink in spite of the best intentions. I am sanguine of the result

65.—*General character of Civil Courts.*—Before leaving the subject of Civil Justice, I would say one word more on the general efficiency of our Courts. I have freely criticised their failings, and to any one accustomed to the proceedings of regular Courts of Justice, there can be no doubt that there has been, and more or less is, an appearance of want of Judicial bearing, habits, and frame of mind, and of knowledge of plain and primary rules and principles, by which judicial work is infinitely facilitated and simplified. In spite of the absence of any very accurate definition of crimes, our criminal work is notwithstanding not badly done. But with no law, either little or bad procedure, and very imperfect practice, there can be no doubt that our Civil Courts have been everywhere very indifferent tribunals working in a country where we had need of the very best system. Still it must be remembered that our Non-Regulation system has many advantages in its accessibility and intelligibility to the mass of the people, and its accordance with the ideas of a country where fixed tribunals and the regular Administration of Justice have been unknown ; and speaking comparatively. I confidently hope that our Courts in Oude may not unfavorably contrast with others in any other part of India. If I say a good deal against our own Judicial Officers, I by no means admit that any one else in any other Province is to make that an occasion to say a word against them Compared to the old regulation system which has, up to 1859, prevailed in all our older Provinces, and which must, for many generations, leave its stam upon the people, I consider that we are immensely superior, and I trust that we shall not so demoralise the people of Oude, that they will never be worse than we found them, and that they may possibly become better. Compared to the Punjab and other Non-Rugulation Courts, I can only say that

in this, as in other things, our object has been to take as our basis all that has been already devised and learned, and to improve it so far as we can. The germ of several improvements had been suggested in the Punjab before the mutiny and I believe that during recent years the course there and here has been in some respects parallel, while in other respects we have differed. In Oude we have gone farther in some particular direction.

66.—*Mode of taking and recording evidence.*—It is in consequence of the arrangement which I have adopted, taking first Criminal then Civil Justice, and by no means on account of its relative interest that I have come so late to a subject which is common to both, and which is probably the most important of all, I mean the reformed mode of taking and recording evidence. This alone may be said to have caused a complete revolution in the mode of administering justice. Our system is now something totally different from what it was in former days. Every witness is examined as a real witness face to face with the Judge in open court, instead of making an affidavit to a Mohurrir to be afterwards gabbled over before the Judge, and there is no longer any vernacular record of the evidence (except, of course, when the Judge is himself a native,) in any case great or small saving those tried by unpassed Assistants whose want of knowledge of the language renders it necessary, that some one else should, for security, record it. In all other trials Criminal and Civil before all other Officers of every description, the record simply consists of the notes taken by the Judge in his own hand.

67.—No doubt this is a bold and to most Indian Officers it will seem a startling innovation. In a country where the Judge is supervised and criticised by a public and a press, and the Judge is of the same race and language as the witness, there can be no doubt about it. But in this country there seemed at first some ground for hesitation Although I have, for several years, always enforced within my jurisdiction the proper examination of the witnesses and the filing of the notes taken by the Judge as the primary and most authentic record, I for long clung to the plan of keeping up an official reporter, a man in no way analogous to the old Izhar, Navees, but a skilled reporter sitting obscure in a corner andsaying not a word but making a note in the language of the witness more full and exact than an English note could be. That plan we have gradually abandoned as we advanced in experience not without some regrets, and I may, therefore,

be regarded as an impartial witness when I say that, so far as we have yet gone all our experience and the feeling of most of the Local Officers is in favor of the great success of the present unqualified system. It is remarkable how much opinion has turned in favor of the scheme. There was much doubt and difficulty at first, but gradually almost every one has come round to like and praise it in its essential features; there is only difference of the opinion about some of the details. I consider it, then to be established that the system is a most decided success.

68.—In practice we have found the present record sufficient for our purposes. The great doubt might have been whether it would suffice for revision, review, and appeal. It has, I think, quite sufficed for such purposes. The record now gives as a rapid insight into the main facts and proceedings, conduct, and train of induction in the mind of the Judge, and provided he is honest, does his duty, and writes an English character (not unintelligible hieroglgphics,) nothing is usually wanting It may be objected that if the Judge be dishonest, prejudiced, spiteful, or partial, if he slurs over the duty, or if he writes an illegible hand, the object will be defeated. I reply that we presume that only men possessing the most ordinary and necessary qualifications will be judicially employed. Honesty, industry and education to the point of reading and writing may fairly be required and without difficulty exacted from all Officers so employed. I consider, then, that so far there is really no difficulty If any man does not take proper and legible notes, I shall submit a recommendation for his being [redacted] dealt with by the Chief Court

The abolition of the system of trying upon the record has ridded us fo one of the chief difficulties in the way of the system. The only cases, in respect to which I have sometimes doubts, are the important criminal ones refered by Commissioners for my confirmation I confess that if I were to decide very difficult and delicate questions of fact upon the somewhat summary notes of the evidence, which I have sometimes received, I should be embarrassed, but I consider, first that I do not try upon the record, that the Commissioner tries the case, and passes sentence, and that I merely endorse, confirm, or modify his sentence with reference to the information

before me, the Commissioner being responsible in a primary, I in but a secondary degree; and next I think that we may fairly require that the minuteness and fullness of the notes should be proportioned to the importance and difficulty of the case, and that Commissioners must make a full and careful record of heavy cases

69.—Of the advantage and necessity of following our mode of fairly examining each witness in open Court instead of allowing a subordinate Mohurrir to do so, I cannot conceive that (prejudice and habit apart) there can be any difference of opinion. True the process occupies time, true a witness may be stolid or obdurate, to get him to the point may be a work involving some labor and patience; but we may as well shut up our Courts altogether as say that we have not time and patience to take evidence. If we profess to administer justice, we must supply sufficient Judicial power for the purpose, and in my opinion to counterbalance the time and toil of examining witnesses, much may be gained by the avoidance of irrelevant matter, a good procedure, and Judicial habits of business. As yet we have had no difficult in getting through the work, and I hope that as the work increases the Judicial aptitude and skill of our Officers will also so increase that they will more than keep pace with it.

If the examination of the witnesses before the Judge be accepted, I am quite confident that his taking proper English notes causes very little or no additional delay. The notes involve a certain labor, but no time, and I think that once the habit and knack of taking good notes (sufficient and not too much all the essential and none of the irrelevant parts of the evidence) is acquired, the labor will be more than repaid to theJudge himself by the facility and confiidence given to his proceedings as the case goes on. It is rather the labor of pumping the witnesses which combined with the note taking may sometimes make the labor heavy, the same man being at the same time counsel for both sides, Judge, and Reporter; but this is in fact an evil inevitable to our system of dealing direct without the intervention of professional Agents, and it is counterbalanced by many advantages in our practice. As things advance, it may be that some day when the memory of the old Izhar Nuvoeses is gone, and their traditions lost, a real Reporter may be allowed in some heavy cases and prosecutors appointed to aid the Judge in conflict with counsel for prisoners. I very much feel that nothing can be so prejudicial to the interests of justice as to work our Officers so hard that their

duties become irksome, and that they acquire a tendency to shirk thorough investigation Meantime I confidently recommend our reform in the system of taking evidence.

70.—*The Clerk of the Court*— Allied to, and in fact necessary to the efficient working of the new mode of record is another important reform of system by the institution of the responsible Moonserim or clerk of the Court and the reduction and remodelling of the subordinate Omlah While we throw upon the Judge some new labors we relieve him of others A Moonserim on a salary of Rs. 150 per mensem is now sanctioned for each District and Divisional Court, and the system has already succeeded even better than I had hoped. Having observed from personal experience the enormously improved position of the Judge when a case is fairly placed before him for trial, free from the petty executive duties which attend its preparation, believing that to employ for all such duties a man paid on the scale assigned to higher duties was a waste of labor, that a man on a smaller salary might, with advantage perform such duties in subordination to the Judge, and that a responsible Officer acting in his own name is far more easily checked and supervised than a man acting irresponsibly in the name of another, I have proposed and obtained approval and sanction for the trial of this system. The Moonserim is acquainted with both English and the Vernacular, and I may add that it will now be necessary that several of the inferior Officers should add a little English to their vernacular knowledge, which in fact they are now learning, and may very well be required to learn The Moonserim is the Executive Officer of the Court and is charged with the management of the Office, and with all the mechanical and habitual stages of a case. All this he does in his own name, and on his own responsibility as a considerable Officer of the Judicial establishment. I enclose some of the instructions issued on the subject Circular, No 122 of 1859 and No. 45 of 1860. Of course a good deal of minute supervision and much care is required at first; such a system is not perfected in a day; but I now feel very confident that as the work increases the ability and trustworthiness of the Moonssrims to relieve the Judges of many petty details will also rapidly increase. The great difficulty apprehended was the want of men fit for the post. I never had the least doubt that the demand, the pay, and the system would eventually cause fit men to be produced. But I had some doubts whether in the first instance men at all near the mark would be found. I have, therefore, been gratified

to observe in the course of my inspection of the District Offices that in a large proportion of the districts men have already been obtained who only require a little training, instruction, and practice to make them quite fit for the place. I have no doubt that in offices, where there has not yet been the same success, the want will soon be supplied, and that eventually we shall have abundant choice from which to select the fittest men for the high post of Moonserim. The Moonserrim's knowledge of English enables him to obviate all inconvenience in the Office from the language of record being usually English, and to make the necessary translations. On the other hand the Izhar Nuveeses being reduced, and the endless roobakarees, &c., having been got rid of, the work of the Persian writing Omlah is reduced to very small compass, and their reduction more than makes up for the pay of the Moonserim.

In justice to the Moonserims and seeing the very heavy duties to be thrown on them, I must observe that there is a great deal of duty heretofore belonging to the English Office which is now apt to be thrown upon them, and upon which we hardly calculated in arranging the scheme. I do not think that in the establishments any reduction was made in the English Office as relieved by the Moonserim. But as what were formerly the vernacular statements are prepared under his superintendence, it is apt to fall on him to copy them out and check the calculations, to write letters, &c. on Judicial matters, and do other work hitherto falling to the share of the English Office. This must not be lost sight of in local arrangements We must not overwork the Moonserim. I think the best way will be to take something from the English Office, and give the Moonserim an efficient Deputy on a good salary, besides the mere understrapper already sanctioned.

71.—Statement No. XXIII. gives the number of officials dismissed or punished. It is larger than it should be, but as it comprises men of the large police force punished in the beginning of the year, it is no guide to the state of our present Judicial Establishments, and I need only remark that the excessive and disproportionate number of punishments inthe Durriabad District seems to shew something wrong or some want of discretion.

72.—*Printed instructions, Returns, &c.*—The first establishment of a new system necessarily involves [many detailed tinstructions and ex-

planations, and the most important of the Judicial Circulars, Rules, Orders, Decisions, &c., printed from time to time have now attained a considerable bulk. Before my departure, I have, there fore, completed a careful Index of the whole which will be I trust a great assistance to all Officers, and leave no excuse for ignorance or mistake A private Printer has volunteered to republish the whole as a speculation, and I hope that the Judicial Orders will thus soon be available in a compendi ous form. The whole of the periodical Statements and Returns have been with much labor revised and reduced to moderate bulk, by which I trust that great saving of toil and writing will be effected and the necessary information he brought within a bulk and into a shape which may render it accessible to ordinary mortals.

73.—*Court Rooms.*—I should like to see some more formal and convenient arrangement of our Court Rooms. A few rupees spent on a railing, or witness box, is no great matter, and it is really very much to make a witness stand up as a witness, and to keep prisoners, parties, &c., in their proper places, while it is especially desirable freely to admit the public to a part of the room specially set apart for them. At present there is usually neither decent arrangement, public- ity, nor privacy. Any man invades the Judge at any time, and he- is at any time liable to be attacked by a chuprassee wherever he elects to establish himself; consequently the importunate get in too much and the intelligent and respectable public stay away. Of all things I would try to make our Courts of Justice places of interest and respectability, where a man should be well pleased to sit, instead of thinking it a point of honor to keep away, however much he may litigate through others. The Deputy Commissioner of Seetapore has made a very well arranged Court Room, which I have desired him to circulate for example.

74.—*General distribution of business.*—Statement No. XXIV. shews first the total number of cases both Criminal and Civil decided in each District, and second the proportion of cases decided by each class of Officers in each District, and in the Province. The Lucknow District shews about one-third of the whole number of cases, that is about one-fourth of the criminal and one-half of the civil cases. Next and considerably a head of the others is Fyzabad, which is both a con- siderable Town and a large heavy District. Durriabad comes next, then

Sooltanpore, then Gonda. The remaining Districts do not very much vary except that Luckimpore (or Mahomdee) is considerably lighter than any other District.

3,056 Cases were decided by the Deputy Commissioners, *viz.*, 2,799 criminal, and but 257 Civil cases ;. but as a large proportion of corporal punishment cases tried by Assistants and Tehseeldars were referred to Deputy Commissioners for confirmation, I believe that the proportion of the cases really tried by Deputy Commissioners is very much smaller In new districts they have much Miscellaneous work, but as things settle down, I trust that the more experienced Officers will take a large proportion of the cases.

The greater number of cases, 7618 in all were decided by the Assistants and by the Tehseeldars 1392 cases.

75.—This last class of officers have not yet been employed so largely as they will be ; many of them were new men with much to learn and the work was not at first so heavy as greatly to require their assistance But most of them have now been invested with judicial powers, and we shall trust to them to do on the spot a very large proportion of the petty judicial business. They will also as the Local Magistrates make the first investigation, and take the precognitions in almost all criminal cases sent in by the Police. I have prohibited the assignment of judicial work to the Tehseeldars of Sudder Stations, thinking it better that this should be done by the Assistants. Some difinition of the Judicial powers of the Naib Tehseeldars and Peshkars is still required.

76.—I have not yet received any Return of work done by the new Talooqdar Magistrates, and I will here only suggest that it is my impression that a Talooqdar could perhaps better, and with greater advantage, decide small civil suits than any other class of cases. He would, probably too, I should say, like this better, and less form would be necessary. I do not see why a good man should not act as a kind of standing arbitrator between the cultivators and petty money-lenders in his neighborhood.

77.—*Reports and character of Officers.*—The Commissioners of Divisions have favored me with very full and excellent Reports on judicial subjects ; and of the Deputy Commissioners, Captain Thompson's Reports are peculiarly ample and intelligent ; and Messrs. Capper and Carnegy, Captain Thurburn and others have given much useful information, and supplied many good suggestions

78.—I have, in my former note expressed my opinion of the judicial merits of most of the Commissioners, and in previous passages of this Report, I have alluded to the exceptional work (political trials, &c.) which has during the past year fallen upon Colonel Abbott, and which he has so well performed. I am sure that great thanks are due to him Mr. Tucker and Colonel Barrow have maintained the high character which they have borne. Colonel Clarke has returned from leave and in him we have a most honest, able, and thorough Officer who exercises a minute supervision over his districts, and whose judicial proceedings are most complete and satisfactory. No man can more conscientiously and well do his duty. Mr. Simson is also an extremely able Commissioner The records of trials before him shew every Judicial qualification which I could desire, and he very effectively controls his subordinates.

Of the Deputy Commissioners, Mr. P. Carnegy has had by far the heaviest charge and deserves great credit for the way in which he got through his many duties. It was absolutely impossible that one man could do full justice to the whole of the judicial work especially the civil appeal and trials, but under the circumstances he has managed as well as could be expected, and as I have already said, he has done extremely well in getting up the heavy criminal cases and other important business. Now that the Civil Court is separated from the district. I have no doubt that both will be thoroughly well worked. Captain Orr is I believe a very intelligent conscientious Officer, thoroughly acquainted with Oude [redacted] but he is absent on leave. He was succeeded by Mr. Capper who has I think much judicial knowledge and capacity, I look upon him as one the best Judicial Officers in the province, and in some respects perhaps superior to any other Deputy Commissioner. His report on the

Civil Law I have already noticed and his trials are thoroughly well done. Captain Thompson's reports and Cutchery arrangements, I have already noticed, and he is certainly one of our most promising Officers.

Captain Perkins is able and industrious, decidedly a good Judicial Officer.

Captain Chamier has much zeal and ability. [redacted] perhaps [redacted] somewhat he overgoverns his district, but the last is a fault which time cures, and his activity and energy are deserving of every commendation, I trust that he will do well.

Mr. Hogg is a very good and intelligent officer. I have not seen much of his judicial work, but I believe that he is capable of doing extremely well in every way.

Mr. Bradford has great acuteness, and I believe has deserved very well indeed. Major Evans and Captain Reid have recently returned from leave but I understand that they are both good Officers.

Captain Ross I have long known, and I think well of him. The way in which he has got through his work, and made the judicial arrangements of his district seems very commendable, and the Commissioner only thinks that he is somewhat hasty in his judgment.

Major Steel [redacted] does his work sensibly, [redacted]

Captain Thurburn does his Criminal cases very well, and though he does not know much of Civil Law, all the arrangements of his Court are exceedingly good, in many respects a model; so also is his house of correction and tread mill. He deseves well

Of the Assistants Mr. C. Elliott is one of the best and most promising I have ever seen. He deserves very great credit for the way in which single handed and quite new to the work he took, up and managed for sometime the Lucknow Civil Court. With a little experience he will make a first rate Judicial Officer.

Mr. King has also excellent qualification for judicial duties, and ranks very high among the Assistants.

Mr. Wood is a most deserving Officer, although I have in another place somewhat qualified his success in the City.

Messrs. Berkeley and Bickers are very favorably reported of I have seen no judicial work of Ramdial, and believe that he is principally employed in other Departments.

The zeal and energy of Messrs. Glynn and Crommelin is commended

Mr. G. Lang is young and asyetinexperienced, but gives promise of becoming an excellent assistant; I think highly of him.

Hursuhai, is a good steady oldman.

Captain Shaw is a very good steady Officer who has done a greatdeal of the Fyzabad work.

Mr. J. Kavanagh is, I understand, one of the most promising Extra Assistants in the Province.

Mr. Collins is stated to be in defatigable and careful, and Mr. Walker zealous and energetic.

Captain Mac Andrew has lately been employed on special duty but I believe that he holds a very high character

Mr T. Kavanagh has decided talent and judicial ability. If he also prove discreet he has the capacity for making an excellent Judicial Officer

Mr F. Williams is an active and useful Officer, and has done much to supply Judicial knowlege and experience in which he was before somewhat wanting

Abdool Hakeem, and Abbas Ali. Adjoodheea Pershad and Hazaree Lall are all good Native Assistants; Nundkishore Wazeer Hoosein and Mohomed Buksh are also favorably reported of, but the Commissioner has found some fault with Nundkishore.

Lieut. Fisher was, I understand lately found, deficient in examination, but he seems to be exerting himself to qualify.

Mr. Burton's qualifications I should think indifferent, but he is said to be improving

Mr H. Ross is favorably reported on, and seems to be a good active and efficient Assistant

Lieutenant Eckford is I believe, absent, but he is favorably reported of

Captain Clarke is, I think, an excellent Judicial Officer, one of the best as well as most experienced among the Assistants. I am sorry that he is now going, and hope that he will return to the commission.

Mr. Sparks a new and young Assistant, I believe promises very well.

Among the Tehseeldars, Adjoodhea Pershad of Tarafgunge, district or Gonda, is reported to be particularly promising and highly qualified.

The Commissioners of Baraitch and Seetapore express themselves much indebted to the Head Clerks of their offices, Messrs. S. Williams and Connor.

In my own office, Mr. F. Lincoln late Superintendent, and now Ex-Assistant Commissioner, has been most indefatigable in the preparation of the returns and statistics now submitted ; and has labored in excess of his duty with an assiduity and successes which demand my particular acknowledgments. He has always been a most zealous Officer, and gives earnestof his success in his new line of duty. Mr. W, Hutton has rendered me great assistance in the preparation of Indices and other arrangements, and Brij-Bhookun Lall, my Moonserim, has done his duty well.

79.—Here then I close my report for 1859, and I can only in conclusion express a hope that the year 1860 will, be one of rapid progress and that those things which he have been initiated in 1859 will, in the following year, be well established in sound and healthy practice.

GEORGE CAMPBELL,
Judicial Commissioner, Oude.

LUCKNOW :
The 30th March, 1860.

LUCKNOW.—*Printed at the* NEWUL KISHORE, *Press.*